

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Paragon Security Systems, Inc.,)	
Employer,)	
)	
and)	
)	
United Government Security Officers)	
Of America International Union,)	
Petitioner,)	Case No. 31-RC-126224
)	
)	

Request for Review

I. Introduction.

On April 16, 2014, Hearing Officer Steven Alduenda opened the hearing in this matter to hear testimony on a single issue, whether there exists a successorship bar between Paragon Systems, Inc. and the Security Police Fire Professionals of America, International Union, Intervenor (“SPFPA”). Testimony was presented regarding the issue set for hearing and the record was closed on April 16, 2014. On April 25, 2014, the Regional Director issued his Decision and Order dismissing the petition. This decision was in error because it made fatal assumptions regarding certain facts and law. It assumed that bargaining commenced when the International (Intervenor) began “formal” negotiations, and that the successor bar did not commence until that date. For the following reasons, the Petitioner requests that the Board review this Decision and Order.

II. Facts of the Case.

The Intervenor represented the employees in the stipulated unit¹ (“Unit”) for several years, including the execution of a collective bargaining agreement in February, 2012 with the predecessor employer, Whitestone. Tr., p. 20; Ex. I-1 and I-2. The Intervenor then executed a bridge agreement with another predecessor employer, G4S, in 2012. Ex. I-3; Tr. 21-23. Paragon took over the contract in October, 2013, and Michael Hough, Intervenor’s Regional Director, testified that the Intervenor found out about that transition in late August, 2013 from a local official, Gene Fowler. Tr., p. 25. He then changed his testimony and said that he knew of the transition in July, 2013 and even corresponded with Paragon. Tr., p. 69.

Prior to that, on July 22, 2013, the Unit officers were given offers of employment with Paragon that set out the initial terms and conditions of employment. Tr., p. 30; Ex. I-6. Those initial terms and conditions varied little from the practice under the predecessor and involved the same service work, with the same client, and the same management at the same location. Tr., p. 33, 44. The only differences were the inclusion of a supervisor on site during work hours and the rate of pay for wages and benefits. Tr. p. 45. Prior to the start of Paragon’s contract work, the officers had to undergo qualifications and training prior to the start of the contract, so that sometime in August, 2013, Paragon employed the officers to perform that training. Tr. p. 61. Around this time, the Intervenor also began negotiations with Paragon.

On July 25, 2013, Mr. Hough communicated with Dannie Sims, Project

¹ The Unit was defined on pages 18 and 19 of the Transcript as all full-time and part-time security officers performing security duties for Paragon Systems, Inc. at the ARTCC in Palmdale, CA.

Manager for Paragon, regarding the discrepancy in wages and benefits. Tr., p. 69. The current rate, and the rate Paragon was required to pay was \$29.46/hour for wages and \$4.10/hour for health and welfare. Tr., p. 68. Paragon offered \$23.77/hour for wages and \$3.59/hour for health and welfare. Ex. I-6. To support their argument, the Intervenor sent Paragon copies of the predecessor CBA in August, 2013. Tr., p. 69.

Then, on October 5, 2013, the Mr. Hough and Mr. Sims, Project had another conversation regarding wages and benefits. Tr., p. 42-43.² On October 21, 2013, the local president, Dennis Blair, sent Paragon a copy of the predecessor CBA and bridge agreement. Tr., p. 26; Ex. I-4. He also filed a grievance under the predecessor CBA for discipline issued to an employee named Covino. Tr. p. 71.

Negotiations continued in December, 2013, when Paragon then sent proposals via email. Tr., p. 28; Ex. I-5. Remarkably, the Intervenor took no action between July, 2013 and December, 2013 to negotiate a contract but waited for Paragon to send a proposal. Tr. p. 72. Even more remarkably, the Intervenor did not meet to discuss that proposal until March 19th, 2014, when they combined these negotiations with other units. Tr., p. 46-47. During that one day of negotiation, the Intervenor and Paragon agreed upon almost all the non-economic terms, but were not able to reach agreement on the one change in non-economic terms, the use of supervisors, nor were they able to reach agreement on the economic terms. Tr., p. 49. Mr.

² Negotiations could have taken place earlier based on SPFPA's practice of negotiating for bridge agreements. Mr. Hough did not know if negotiations took place, that would have been done through Don Eagle's office. Tr., p. 63-64.

Hough testified that there were complex issues to negotiate, but since those issues did not change from the predecessor, and since they were negotiated in one day (the terms that Mr. Hough testified were complex did not include the still-open terms), that does not indicate that they were complex. After the March 19, 2014 date, no other meetings have taken place.

It must also be noted that negotiations could have occurred at any time prior to this between Don Eagle and Paragon. Tr., p. 64. Mr. Hough testified that Mr. Eagle could have sent proposals but that he would not be aware of them. Id. Since Mr. Eagle was the chief negotiator, this is entirely possible, but we do not know. Tr., p. 65. What is clear, is that after nine months of negotiations, the Intervenor and Paragon discussed terms a couple times, met once, and are still only half way to a contract.

III. Law and Argument.

When a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, the previously chosen representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, beginning from the time employer's obligation to recognize the union attaches, without challenge to its representative status. St. Elizabeth Manor, Inc., 329 NLRB 341 (1999). The goal of the successor bar is to establish a balance between stabilizing labor-management relations during periods of transition, and the freedom of the employees to select their representatives. The result was the establishment of an insulated period of

time that is reasonably long given the circumstances of the successorship, namely, was it a renewal agreement or the negotiation of a new agreement. The purpose of the insulated period was to allow the incumbent union time to "focus on bargaining." UGL-UNICCO, 357 NLRB 76 (2011). The factors to be taken into account to determine if a reasonable period has passed include: when did the parties begin negotiations, how often did they meet, what issues were discussed, and what issues remain unresolved. *NLRB Guide for Hearing Officer in Representation Cases*, p. 64.

As the party asserting the bar, SPFPA has the burden of producing clear and substantial evidence establishing that a reasonable time has not been provided in which to negotiate a new agreement with Paragon. The evidence presented at the hearing clearly established that SPFPA and Paragon had ample time to negotiate an agreement but simply failed to take the time to do so.

The record established that the Intervenor and Paragon began negotiations over the wages and benefits of the employees in July, 2013. Those discussions continued through October (with more discussions by the Intervenor and Paragon), and then December, 2013, when Paragon gave the Intervenor a proposal. In that time period, almost six months, the Intervenor took little to no action to advance negotiations, not even to forward a proposal for a new contract. It is interesting that the Intervenor did not even have their lead negotiator testify at the hearing. Mr. Eagle may or may not have had negotiations with Paragon, we do not know. What we do know is that the Intervenor took little to no action for the first six

months.

Then, when it finally did get a proposal, it took the Intervenor three more months before it got to the table with Paragon to discuss the issues. Mr. Hough testified that there were complex issues to negotiate, but the issues which remain open, the use of supervisors and economic terms, were not included in the list that he believed were complex. Therefore, the fact that Paragon and the Intervenor were able to reach agreement on these non-economic issues in one day (March 19th) belies the assertion that they were complex.

So, after a period of nine months, the Intervenor only met with Paragon for a few hours and is still only half way to a contract. This stalling and inactivity is precisely the reason that the courts have balanced an insulated period for negotiating against the right of the employees to choose their representative. Employees should not have to suffer while their representative does nothing. That is why the insulated period, that is the basis of the successorship bar doctrine, is designed to allow a union only enough time to “prove their mettle in negotiations to the employees they represent without their majority being challenged.” Decision and Direction of Election, 10-RC-115744, attached. Any more than that, and we run the risk of a representative doing nothing for months with the employees unable to make a change.

The Regional Director found that bargaining did not commence until March 18 and 19, 2014 when proposals were exchanged in face-to-face negotiations. Therefore, the legal assumption made by the Regional Director, without any

support, was that bargaining, for the purposes of the successor bar doctrine, begins when an international office of the local conducts face-to-face negotiations with the exchange of proposals. The Regional Director then went further and declared that anything prior does not implicate the successor bar doctrine because the start date, according to UGL-UNICCO is the date of the “first bargaining meeting.” However, the Regional Director completely ignores the testimony that the Intervenor and the employer discussed terms and conditions of employment (wages) in July, 2013 and October, 2013, and even exchanged proposals. The Decision and Order never bothers to clarify why the March dates are considering the “first bargaining meeting” and the July and October, 2013 dates are not.

According to NLRB Rule 102.67, there are grounds for review if:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

In this case, there is a substantial question of law or policy raised because the Board has not defined what it meant in UGL-UNICCO, 357 NLRB 76 (2011) when it said that the successor bar starts when bargaining begins. Does that mean the local, the international, individuals, face-to-face bargaining, teleconference, etc? In this case, it is clear the Intervenor, began negotiating in July, 2013 through

October, 2013 when the parties discussed and exchanged proposals regarding wages. The Regional Director only discounted the July, 2013 date as the time when it was clear that the employer would not assume the predecessor terms and conditions of employment, but then failed to address the actual negotiation that took place at this time over wages and other terms.

This distinction also raises the second factor, whether a factual error was made in the Decision and Order. In this case, the finding that bargaining commenced on March, 2014 is in error. As discussed above, bargaining began in July, 2013.

Lastly, there are very compelling reasons for the Board to reverse the Regional Director's Decision and Order. The Decision, which grants tacit authority to the International to determine, even in bad faith, when bargaining will commence (and, therefore, determine when the successor bar should be applied) is contrary to the members' right to select their representative. It is clear from this case that Mr. Hough and the International did very little in the first nine months to address the local's needs and bargain. Through this Decision, the Regional Director is essentially saying that the International can do what it likes and ignore its members for months and will still be protected because it has authority to determine when the bar begins.

Or, are we to assume that the successor bar doctrine only bars petitions that are filed during the bar, which commences when bargaining begins? So that, in this case, petitions could have been filed anytime between July, 2013 (when the

members were hired by the employer, or October, 2013 when the employer took over as successor) and March 18, 2014 because the bar did not commence until that March date? Such a result would be absurd because, if a successor takes over, there would be no protected period until the union could get the employer to the table to formally exchange proposals for terms and conditions of employment.

Far more likely is the conclusion that the successor bar commences when the successor hires the union members and is then adjusted to compensate for the beginning of bargaining, or when the union could get the employer to discuss terms and conditions of employment. In this case, that took place, at the latest, in October, 2013. From that point, the Intervenor is protected and afforded an opportunity to prove its mettle. But, what the Regional Director's Decision and Order assert, is that the bar does not begin until "formal" bargaining commences. Prior to that, a petition may be filed. For this reason, the Board must reconsider the Regional Director's Decision and Order.

Respectfully submitted,

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